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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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DISPATCHED BY

MM Docket No. 94-85

In the Matter of

Amendment of Section 73.202(b), RM-8482  
Table of Allotments,  
FM Broadcast Stations.  
(Falmouth and Mashpee,  
Massachusetts)

**REPORT AND ORDER**  
(Proceeding Terminated)

Adopted: September 15, 1995; Released: September 22, 1995

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 9 FCC Rcd 3591 (1994), issued in response to a petition for rule making filed by J. J. Taylor Companies, Inc. ("petitioner"), licensee of Station WFAL(FM), Channel 266A, Falmouth, Massachusetts.<sup>1</sup> The *Notice* proposed the reallocation of Channel 266A from Falmouth, Massachusetts, to Mashpee, Massachusetts, and modification of the license for Station WFAL(FM) accordingly. Petitioner filed comments reiterating its intention to apply for Channel 266A, if allotted to Mashpee. Joan Orr ("Orr") filed a petition for rule making and contingent counterproposal.<sup>2</sup>

2. In the *Notice*, we stated that we were unable to determine if the reallocation of Channel 266A from Falmouth, Massachusetts to Mashpee, Massachusetts, would result in a preferential arrangement of allotments. We noted that Mashpee is partially within the Hyannis Urbanized Area as

defined by the U.S. Census, and questioned whether Mashpee should be credited with all of the services licensed to the urbanized area or whether the reallocation would provide Mashpee with its first local aural broadcast service.<sup>3</sup> Further, since petitioner is moving its transmitter site, the *Notice* pointed out that there is a gain and loss area.

3. Petitioner submitted information to support its claim that Mashpee is an independent community deserving of a first local service preference. Petitioner states that although it does intend to relocate its transmitter, which will produce a gain and loss area, the loss area is served by at least five aural services. Further, it would continue to provide a 70 dBu signal to the entire community of Falmouth from the new site. Petitioner contends that Mashpee is an independent community from the Hyannis Urbanized Area with its own local government, police and fire departments and local schools and a central library. According to petitioner, the Mashpee Chamber of Commerce represents over 100 commercial establishments in Mashpee. There is a hospital, two local newspapers and a local cable TV system. Mashpee does not rely on any part of the Hyannis Urbanized Area as it even has its own water system and independent tax structure with local assessments and budgeting. Petitioner submits that the inclusion of 1,928 residents of Mashpee within the Hyannis Urbanized Area is a statistical event having no significance to Mashpee's status as a community. Applying the Census population density criterion to the 1,928 Mashpee residents included in the Hyannis Urbanized Area, it becomes apparent that no more than 1.928 square miles of Mashpee is included in the Hyannis Urbanized Area.<sup>4</sup> Thus, only 8 percent of Mashpee's area is associated with the Hyannis Urbanized Area. Petitioner argues that Mashpee is a separate and independent community from Hyannis and should not be credited with all of the aural services licensed to the Hyannis Urbanized Area.

4. Petitioner requested action on its petition in accordance with Section 1.420(i) of the Rules which allows a change in community of license without facing competing expressions of interest. See *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License* ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in

<sup>1</sup> An assignment of license for Station WFAL(FM) was consummated on June 30, 1995 (BALH-950327GF). The new licensee is Leapfrog Radio Partnership. The call sign for WFAL(FM) has been changed to WUNZ effective March 10, 1995.

<sup>2</sup> Orr counterproposed the allotment of Channel 230A to Wellfleet, Massachusetts, as a first local service. Orr also requested the substitution of Channel 226A for Channel 228A at Harwichport, Massachusetts, to accommodate the new channel at Wellfleet. Orr's proposal will not be considered as a counterproposal in this proceeding since her request and the petitioner's request are not mutually exclusive. A counterproposal is a proposal for an alternative and mutually exclusive allotment or set of allotments in the context of the proceeding in which the proposal is made. See 5 FCC Rcd 931, n.5 (1990). In an attempt to accept Orr's proposal and issue a separate Notice of Proposed Rule Making, we conducted additional engineering studies. We have determined that Channel 230A at Wellfleet is short spaced to Station WFXR, Channel 228A, Harwichport. Further, although Orr proposed to substitute Channel 226A for Channel 228A at Harwichport, Channel 226A at Station WFXR's licensed site, is short spaced to Station WSNE, Channel

227B, Taunton, Massachusetts. Since it is Commission policy not to force an existing station to relocate to accommodate another proposal, no further consideration will be given to Orr's counterproposal and petition for rule making. See *Beaumont and Big Bear Lake, California*, 4 FCC Rcd 7505 (1989). Accordingly, comments filed in response to the counterproposal and petition need not be considered.

<sup>3</sup> FM Stations WPXC, Channel 275A, and WCOD-FM, Channel 291B, are licensed to Hyannis, Massachusetts. There are no AM stations allotted to Hyannis.

<sup>4</sup> Petitioner provided the following information from selected pages from *Summary of Population and Housing Characteristics Massachusetts* (US Census 1991). Page A-12 of this publication explains that: The Census Bureau delineates urbanized areas (UA's) to provide a better separation of urban and rural territory, population, and housing in the vicinity of large places. A UA comprises one or more places ("central place") and the adjacent densely settled surrounding territory ("urban fringe") that together have a minimum of 50,000 persons. The urban fringe generally consists of contiguous territory having a density of at least 1,000 persons per square mile.

part ("*Change of Community MO&O*"), 5 FCC Rcd 7094 (1990). As indicated in the *Notice*, Mashpee is partially located within the Hyannis, Massachusetts Urbanized Area. Since this is a request for a first local service and because of Mashpee's partial inclusion in an urbanized area, we shall use the criteria established in *Huntington Broadcasting Co. v. FCC*, 192 F. 2d 33 (D. C. Cir. 1951), *RKO General, Inc. ("KRFC")*, 5 FCC Rcd 3222 (1990), and *Faye and Richard Tuck ("Tuck")*, 3 FCC Rcd 5374 (1988) as a guideline in this proceeding to determine whether to attribute the Hyannis transmission services to Mashpee. Under these cases, three criteria are considered—signal population coverage, the size of the suburban community relative to the adjacent city, and the interdependence of the suburban community with the central city.<sup>5</sup>

5. With respect to "signal population coverage," Station WUNZ currently provides a 70 dBu signal to five percent and a 60 dBu signal to forty percent of the Hyannis Urbanized Area. Since petitioner does intend to move its transmitter, there will be a change in coverage. From its new site, Station WUNZ will provide a 60 dBu signal to approximately 75 percent and a 70 dBu signal to approximately 33 percent of the Hyannis Urbanized Area. The loss area of Falmouth contains 11,809 people and covers approximately 90 square kilometers (34.8 miles) and the gain area of Mashpee contains 54,183 people and covers approximately 202 square kilometers (78 square miles). The loss area of Falmouth is completely covered by five or more full-time reception services and is, therefore, considered to be a well-served area. As for size and proximity, Mashpee has a 1990 Census population of 7,884 people of which 1,928 are located within the Hyannis Urbanized Area. The community of Mashpee is located approximately ten miles from Hyannis. Hyannis has a population of 14,120 people.

6. With respect to the third factor, interdependence, we conclude that Mashpee is sufficiently independent from Hyannis to warrant a first local service. Petitioner provided a chart showing the employment location of the residents of Barnstable County which includes Mashpee.<sup>6</sup> The chart indicates that 858 of Mashpee's 3,666 employed residents work in the town of Mashpee. The remaining 2,808 employed residents work in Barnstable, Bourne, Chatham, Dennis, Falmouth, Harwich, Orleans, Sandwich and Yarmouth. The work places of Mashpee's citizens are distributed throughout Cape Cod, with a significant portion working in their home town. There are two newspapers in Mashpee. The *Mashpee Messenger* is published on Thursdays while the *Mashpee Enterprise* is published on Tuesdays and Saturdays. The town of Mashpee's cable television franchise is Continental Cablevision which is a stand-alone technical facility located within Mashpee. Petitioner has shown that the residents of Mashpee perceive themselves to

be citizens of an independent community. Petitioner provided a copy of a town survey concerning population, development and local comprehensive plan. The survey illustrated the types of local problems facing the citizens of Mashpee. Mashpee is an incorporated town governed by a Board of Selectmen whose members are elected by the residents of Mashpee. The Board develops the budget and oversees the economic development of Mashpee. Mashpee has its own Zoning Board, Housing Authority, Tax Office and Building Department. Although Mashpee does not have its own telephone book neither does any other community on Cape Cod. All of the towns on Cape Cod are included in the Cape Cod Area White Pages. Mashpee does have its own zip code. There are six medical facilities with Mashpee addresses including the Mashpee Family Practice and Mashpee Medical Associates. Although there is no local transportation system, connections can be made via the local bus lines that run out of Falmouth and Bourne. Mashpee has its own local media market served by two newspapers and a cable television company, fulfilling the seventh FCC criterion for evaluation of a community's independence from an adjacent urban area. Mashpee has its own schools, central library, municipal water system, police and fire departments and its own tax structure with local assessments.

7. We conclude that Mashpee, partially located within the Hyannis Urbanized Area, should be treated as a separate and distinct community. While factors one and two could appear to favor attributing the Hyannis stations to Mashpee, the third factor, interdependence of the suburban community to the urbanized area, strongly favors a finding of not attributing the Hyannis stations to Mashpee. As stated in *Tuck*, the size and proximity of the specified community to the central city and signal population coverage are pertinent, but less significant than evidence of independence. As a result, we will not attribute the Hyannis stations to Mashpee.

8. Having made that decision, we must next determine whether petitioner's proposal would result in a preferential arrangement of allotments. To do so, we must compare the existing and proposed arrangement of allotments using the allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.<sup>7</sup> Our decision is based on Priority No. 3, first local service. Under this priority, the proposed arrangement of allotments would result in the addition of a first local service to Mashpee, population 7,884. By way of contrast, retaining the existing arrangement of allotments would result in Falmouth, population 4,047, having two local transmission services. Since Mashpee has a larger population, we believe that the public interest is better served by providing a first local service to Mashpee rather than having two such services in Falmouth. Falmouth will continue to receive service from FM Station WCIB. Based

<sup>5</sup> There are eight factors relevant to interdependence: (1) the extent to which community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has its own newspaper or other media that covers the community's local needs and interests; (3) whether the community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has its own telephone book provided by the local telephone company or zip code; (6) whether the community has its own commercial establishments,

health facilities, and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the municipal services such as police, fire protection, schools, libraries. See *KRFC supra*.

<sup>6</sup> Barnstable County encompasses all of Cape Cod. It is comprised of fifteen separate townships, including Mashpee.

<sup>7</sup> (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. [Co-equal weight would be given to priorities (2) and (3)].

on the information before us, we find that the public interest would be served by reallocating Channel 266A from Falmouth, Massachusetts, to Mashpee, Massachusetts.

9. Channel 266A can be allotted to Mashpee, Massachusetts, in compliance with the Commission's minimum distance separation requirements at petitioner's specified site.<sup>8</sup> In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will modify the license for Station WUNZ to specify Mashpee, Massachusetts, as its community of license on Channel 266A in lieu of its use at Falmouth, Massachusetts.

10. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 6, 1995**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, to read as follows:

Community	Channel No.
Falmouth, Massachusetts	270B
Mashpee, Massachusetts	266A

11. IT IS FURTHER ORDERED, That pursuant to the authority contained in Section 316(a) of the Communications Act of 1934, as amended, that the license of Station WUNZ, Falmouth, Massachusetts, IS MODIFIED, to specify operation at Mashpee, Massachusetts, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in License BMLH-891226KI except for the community as specified above. Any changes, except those specified require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with License BMLH-891226KI, except for the community as specified above, and a license application (Form 302) is filed within 10 days of commencement of program tests.

12. IT IS FURTHER ORDERED, That the counterproposal and petition for rule making filed by Joan Orr IS DISMISSED.

13. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Leapfrog Radio Partnership, licensee of Station WUNZ, is required to submit a rule making fee in addition to the fee required for the applications to effect the change in community of license.

14. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

15. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

<sup>8</sup> The coordinates for Channel 266A at Mashpee are 41-34-45 and 70-30-45.